

DOCKET FILE COPY ORIGINAL

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of

MOONBEAM, INC.

GARY E. WILLSON

For a Construction Permit
New FM Station on Channel 265A
in Calistoga, California

TO: The Honorable Edward Luton
Administrative Law Judge

MM DOCKET NO. 93-42

File No. BPH-911115NO 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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JUL - 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WITNESS NOTIFICATION

Gary E. Willson (Willson) pursuant to the Order, FCC93M-253
(released May 14 1993) gives notice of his intent to cross-

as applied to Moonbeam. Mary Constant's husband, Frederic Constant, is the 100 percent shareholder of Idaho Broadcasting Consortium, Inc., the permittee of FM broadcast station KRMR-FM (formerly KYAA) in Ketchum, Idaho. The consummation of the assignment of construction permit from Jim Kincer to Idaho Broadcasting Consortium, Inc. took place on November 30, 1992. See Ex. 1. The doctrine of spousal attribution for purposes of diversification in comparative broadcast proceedings firmly provides that the media interests of one spouse will be attributed to the other. Richard P. Bott, 4 FCC Rcd. 4924, 4926 (Rev. Bd. 1989). There is, therefore, a legitimate need to cross-examine Mary Constant on the most important of the two comparative criteria -- diversification. This is especially true since her husband's broadcast interests have not even been mentioned in Moonbeam's direct case and for that matter have, as of yet, not even been reported.

Ms. Constant also seeks credit for a number of civic involvements. It appears however that her involvement in some if not all of these activities is not entitled to any credit. She claims credit for membership in the Calistoga Chamber of Commerce but has attended no meetings and has had no involvement. See Ex. 2, p. 48. She also claims to be a member of the Daughters of the California Pioneers. However, this appears to be merely a genealogical society involved in no civic-like activities. See Ex. 2, p. 51. When asked during deposition whether she provided any services to the organization, she answered, "I provided them with my genealogical background which proved that I was entitled

to become a member." Ex. 2, p. 52. She also claims to have served as a docent at the Terwillager Nature Education Center. This organization, however, is located in Marin County, outside the 1 mV contour. See Ex. 2, p. 52. In sum, cross-examination is warranted since there is a significant question of how much, if any, credit should be awarded for Ms. Constant's claim for civic involvements.

Ms. Constant also claims that she spent time prosecuting Moonbeam's application, planning Moonbeam's proposed station, and that she will be the station's full-time general manager. Her deposition, however, reveals she has little understanding about her application and raises questions about her integration proposal. Ms. Constant had no idea of the purpose of a Moonbeam engineering amendment filed on March 2, 1992. Ex. 2, pp. 64-66. She testified that Moonbeam did not amend to a new site. Only on redirect when she was led through the amendment step by step did she realize Moonbeam had amended to a new site. Moonbeam's application states that the station's main studios will be located, as required by Commission rules, within the 3.16 mV contour. However, Ms. Constant testified that the station's main studios will be located at the KFTY-TV offices in Santa Rosa, California, located a considerable distance beyond the 3.16 mV contour. Ex. 2, pp. 71,113. She further claimed that her application as filed was correct when, in response to question 7 of the FCC Form 301 application, she responded that she had no interest in any other broadcast application which was dismissed or denied. Ex. 2, p. 17. As it turns out, she had an interest

in two other broadcast station applications. See Moonbeam March 2, 1992 amendment. Ms. Constant demonstrated considerable confusion about basic aspects of her application, undermining the credibility of her purported claim to serve as the station's full-time general manager.

WHEREFORE, it is respectfully requested that Mary Constant be made available for cross-examination at the scheduled hearing on July 21, 1993.

Respectfully submitted,

GARY E. WILLSON

GAMMON & GRANGE
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

By 
A. Wray Fitch III
His Attorney

July 9, 1993

[0068/c93awfWitness]

EXHIBIT 1

LAW OFFICES
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December 15, 1992

LEE W. SHUBERT
ADMITTED IN D.C. ONLY

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DEC 15 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OUR FILE NO.
1031-102-61

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Consummation of **BAPH-920807GF** re
FM Broadcast Station KYAA, Ketchum, ID

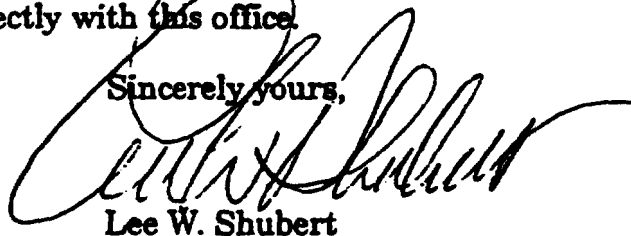
Dear Ms. Searcy:

On behalf of Idaho Broadcasting Consortium, Inc. ("IBC"), this is to advise that BAPH-920807GF, pertaining to the assignment of the construction permit for FM Broadcast Station KYAA, Ketchum, Idaho, from Jim Kincer to IBC was consummated effective as of November 30, 1992. Consistent with the request filed on behalf of IBC on September 17, 1992, this is to request that the call sign for the station be changed from KYAA to KRMR(FM), effective as soon as reasonably possible.

An ownership report (FCC Form 323) for IBC respecting this transaction will be filed shortly.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Sincerely yours,



Lee W. Shubert

cc: Mr. Frederic W. Constant -- Public Inspection File

John Trent, Esq.

LWS/blr

IDAHO BROADCASTING CONSORTIUM/KYAA

TABLE I PARTIES TO APPLICATION

5. (a) Complete Table I with respect to the assignee. (Note: If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement).

INSTRUCTIONS: If applicant is an individual, fill out column (a) only. If applicant is a partnership, fill out columns (a), (b) and (d), state as to each general or limited partner (including silent partners) (a) name and residence, (b) nature of partnership interest (i.e., general or limited), and (d) percent of ownership interest. If applicant is a corporation or unincorporated association with 50 or fewer stockholders, state

EXHIBIT 2

ORIGINAL

1

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

----- X
: IN RE: APPLICATIONS OF : Docket No. MM93-42
: MOONBEAM, INC. : File No. BPH-911115MG
: GARY E. WILLSON : File No. BPH-911115MO
: ----- X

McLean, Virginia

Friday, June 4, 1993

Deposition of MARY CONSTANT, called for examination by
counsel for Gary Willson, pursuant to notice, at the offices
of A. Wray Fitch, Esq., Gammon & Grange, 8280 Greensboro
Drive, Seventh Floor, McLean, Virginia 22102-3807, before
Barbara E. Ingle, a Registered Professional Reporter and
notary public in and for the State of Virginia, beginning at
9:30 a.m., when were present on behalf of the respective
parties:

1 BY MR. FITCH:

2 Q Yes.

3 A Uh-huh.

4 Q And for the sake of the record I'm afraid I'm going
5 to have to read it myself. Question 7 is, "Does the
6 applicant, any party to the application, or any non-party
7 equity owner in the applicant have or have they had any
8 interest in." and B is "a broadcast application which has

1 A That's true.

2 Q At the time you completed your application did you
3 indicate in that application that you were financially
4 qualified?

5 A Yes.

6 Q What was your understanding of what that meant?

7 A Being financially qualified?

8 Q Yes.

9 A It meant that I had -- or have the funds to build
10 and maintain the radio station for three months.

11 Q All right. Anything else? Is that your complete
12 understanding?

13 A That I'm financially qualified to build and run the
14 radio station.

15 Q It's not a trick question. I'm just asking you
16 what you understand.

17 A No, I'm being very straightforward, that I have the
18 funds to build and operate the radio station.

19 Q And what efforts did you make to ensure yourself
20 that you, in fact, were financially qualified?

21 A I assume that I was financially qualified.

1 Q When did you join the Calistoga Performing Arts
2 Association?

3 A I joined that about -- I think it was January,
4 February, about the same time, 1992.

5 Q And describe for me your involvement with that
6 organization.

7 A Well, I was hoping to become very involved with
8 that organization, but unfortunately the performing arts has
9 folded. It's no longer in business.

10 Q When did it fold?

11 A Last summer. I got a letter from them last summer.

12 Q And you're also associated in some way with the
13 Native Daughters of the Golden West?

14 A No, I amended that. It's not the Native Daughters
15 of the Golden West; it's the Society of California Pioneers.

16 Q Is there an organization known as the Native
17 Daughters of the Golden West?

18 A Yes, there is, and in fact, you know, it was just a
19 slip of the tongue. My mother used to belong to the Native
20 Daughters of the Golden West, and when I was writing it out I
21 wrote Native Daughters instead of Society of California
22 Pioneers.

23 Q And do you know when you amended that? You say

1 you amended it?

2 A That is also in here. I think when I amended my
3 integration statement.

4 MR. SHUBERT: It's when we filed the integration
5 statements.

6 BY MR. FITCH:

7 Q Okay. Tell me what your involvement has been in
8 that organization?

9 A Well, the Society of California Pioneers --
10 actually, I'm a Daughter of the California Pioneers, because
11 only men can join the Society of California Pioneers. So
12 women join the Daughters of the Society of California
13 Pioneers. It's an organization in California, and the only
14 way you can join is you have to prove that a direct
15 descendant entered California prior to January 1st, 1849, I
16 think it is. So they're the '49ers.

17 Q So you were qualified to join the --

18 A It's a genealogical society. Yes. There is a
19 history book called History of California, 1880, and there's
20 a chapter on my great-great-grandfather.

21 Q And what have you done with the organization since
22 you joined?

23 A There is nothing to do with the organization. They

1 maintain a library in downtown San Francisco, and they have a
2 lunch from time to time. In fact, there is one -- I think
3 June 12th is the next luncheon, yearly luncheon.

4 Q Is the organization involved in Calistoga in any
5 way?

6 A The organization is vitally involved in any part of
7 California that is historical, particularly with something
8 like mining or anything historical, such as Calistoga. It's
9 not specific to any one part of California.

10 Q Have you provided any services to the organization?

11 A I provided them with my genealogical background
12 which proved that I was entitled to become a member.

13 Q You're a docent of the Terwillager Nature Center?

14 A Yes, I am.

15 Q Where is Corte -- and that's located in Corte
16 Madera?

17 A Yes, that's in Marin. That's where the education
18 center is.

19 Q Do you know if Corte Madera is in or outside the
20 one millivolt contour of --

21 A It's not. The education center is not. The buses
22 travel within the other areas though, but the full-time
23 education center is not.

1 Q Specific areas?

2 A In Napa and Sonoma.

3 Q Does your husband currently have any media
4 interests?

5 A Yes.

6 Q And what are those?

7 A It's in Idaho.

8 Q What is it? Describe the media interest.

9 A It's -- I think he owns a construction permit.

10 Q For --

11 A I think it's Ketchum, Idaho.

12 Q Is this for an FM station?

13 A Yes.

14 Q When was he awarded this construction permit?

15 A I don't know the date.

16 Q Is it recently?

17 A He bought the construction permit.

18 Q He bought it?

19 A He bought it. He didn't apply for it.

20 Q All right. Did he buy it recently?

21 A Recently? What do you mean by -- the last year?

22 Five years? Ten years.

23 Q Within the last year.

1 A Within the last year.

2 Q And is this station being built?

3 A I don't know. I don't know at what point in the
4 process he is right now.

5 Q And he has owned other stations in the past; is
6 that correct?

7 A In the past.

8 Q How long ago?

9 A Oh, it's been at least five years, I think. I
10 think it's been at least five years ago.

11 Q Okay.

12 A I couldn't give you the dates.

13 Q Do you know where those stations were located?

14 A The last station he owned was in Reno and Boise and
15 Eugene, Oregon.

16 Q Were you an owner with him of any of these
17 stations?

18 A No.

19 Q Were you an officer and director of any company
20 which owned or might have owned these stations?

21 A No.

22 Q Were you employed?

23 A No.

1 MR. SHUBERT: Employed at the station?

2 BY MR. FITCH:

3 Q Yes, at the station or by any --

4 A I assumed you meant at the station.

5 Q -- or by any of these corporations?

6 A No.

7 Q Did you have any involvement with your husband's
8 stations?

9 A None.

10 Q Did you amend your application to submit different
11 financial data?

12 A Did I amend it when?

13 Q Did you amend it? Do you recall amending it?

14 A Do you have the date?

15 Q No, I'm just asking do you recall amending your
16 application to submit different financial data?

17 A Than --

18 Q Than what was submitted in your original
19 application.

20 MR. SHUBERT: I think I'll object to the question
21 the way it's framed, because I don't think it was different
22 financial data.

23

1 BY MR. FITCH:

2 Q Do you recall amending it in any way?

3 A My application?

4 Q Your application as it relates to your finances, or
5 to be more precise, by you I'm referring to your corporate
6 entity Moonbeam.

7 A I don't think I did. Is it in the application that
8 it's amended? Do you have something you can show me?

9 MR. SHUBERT: Why don't we show her the amendment
10 so she understands what you're talking about.

11 MR. FITCH: Okay. Let's refer then to page 6 --

12 MR. SHUBERT: Of the original?

13 MR. FITCH: -- of the amended application or the
14 amendment that was filed on March 2nd.

15 MR. SHUBERT: Let the record reflect that the

1 changed; is that correct?

2 A I think the amendment was filed because of a
3 confusion on your part.

4 Q On my part? What confusion are --

5 A I think the confusion was as to actually who Alex
6 Brown and Son were. I guess you were not aware of the fact
7 that it's a stock brokerage firm and that they often hold
8 funds, cash as well as stocks and bonds for people. And so
9 when I put Alex Brown and Son as source of funds, I only
10 meant they were holding those funds for me.

11 Q Now, this amendment was filed in March, is that
12 correct, of '92?

13 A February 1992.

14 MR. SHUBERT: Well, it was filed --

15 A Oh, it was filed March 2nd. You're right.

16 BY MR. FITCH:

17 Q At that point in time in March or February of '92
18 where did this confusion arise? I mean was it confusion in
19 your own mind, or who was it that was --

20 A There was actually no confusion in my mind.

21 Q Who was it, then, that directed or decided that the
22 application should be amended?

23 A I think it was because of a confusion arising on

1 BY MR. FITCH:

2 Q All right. Having reviewed that page, do you
3 recall now whether you amended any part of the engineering of
4 your application?

5 A No. Specifically, no.

6 MR. SHUBERT: No, you don't recall, or no, you
7 didn't?

8 A Oh, no, I don't recall.

9 BY MR. FITCH:

10 Q Well, why don't you take a little time then and
11 look a little closer at this application or amendment and
12 advise me whether it's your understanding that you did amend
13 or did not amend anything having to do with engineering.

14 A Let's see, this is '92?

15 MR. SHUBERT: May I assist the -- this is part of
16 the amendment.

17 A Okay. It was amended.

18 BY MR. FITCH:

19 Q What was amended? Do you know?

20 A Klein Broadcast and Engineering.

21 Q What did that amendment do?

22 MR. SHUBERT: Counsel, are you trying to test her
23 understanding or what the amendment says?

1 MR. FITCH: Yes, I am. I'm trying to test her
2 understanding.

3 It was a change in calculations and I'm not an

1 A I'm sure he did.

2 Q Do you recall any conversations with him about it?

3 A I've had many conversations with Elliott, but I
4 specifically don't recall minute detail or I don't recall --
5 as I said, I am not an engineer myself.

6 Q Do you know if you were proposing a different site
7 in your amended engineering?

8 A No, I haven't proposed any different sites.

9 Q So you've been proposing the same site from the
10 beginning in your application.

11 A You're talking about the same site, yes, on Mount
12 Saint Helena?

13 Q Right. Who is Al Huber?

14 A He is the manager of KFTY in Santa Rosa.

15 Q Did you talk to Mr. Huber at anytime?

16 A Yes, I did. I've talked to him several times.
17 I've been at his office.

18 Q Was that during this time period, sometime in
19 February or March of '92?

20 A I think I probably met him before then. I can't
21 give you the exact date. But I have been in his office
22 several times, and I think I was in there before 1992.

23 Q If you look at page 25 of the amended engineering,

1 That is something that remains to be seen. I would like to
2 be in it as much as possible.

3 Q Do you know where your main studio will be located?

4 A No, I don't. Actually, it will probably be at KFTY
5 in Santa Rosa.

6 Q All right. Will you serve in the capacity as sales
7 manager?

8 A Yes. I will in the beginning, yes.

9 Q So you'll be general manager, sales manager -- will
10 you have any other titles?

11 A At this point, no.

12 Q How far is Santa Rosa from Calistoga?

13 A It's about -- well, it depends on what part of
14 Santa Rosa you're going to.

15 Q Let's just say the closest part of Santa Rosa.

16 A Okay. The closest part of Santa Rosa to the
17 closest part of Calistoga is about, I suppose, 15 miles,
18 maybe less.

19 Q It's what, a 20-minute ride or something?

20 A At the most, yes.

21 Q You filed in this proceeding an integration and
22 diversification statement, or your counsel did on your
23 behalf, on behalf of Moonbeam. Are you aware of that?

FURTHER EXAMINATION BY COUNSEL FOR GARY WILLSON
BY MR. FITCH:

Q Why did you change sites?

A The other site is a better site, and a lot of it
had to do with our relationship with Mr. Huber.

Q In what way?

A The availability of his offices and his tower site.

Q But your other tower site was available too, wasn't
it, the one originally specified in your application?

A It was originally available.

Q Did you lose availability of it at some point?

A No. I preferred the other site.

Q Did you prefer it, or did your engineer prefer it?

A Both. My engineer preferred it, and when I talked
to Mr. Huber and Mr. Livermore, they were both very
supportive of it.

Q And when you say because of the availability of the
offices, you're talking about availability of KFTY's offices?

A As well as the tower site, yes.

Q You mentioned that you put together a financial
plan.

A Yes.

Q Who put that together?

CERTIFICATE OF SERVICE

I, George Culver, in the law offices of Gammon & Grange, hereby certify that I have sent, this 9th day of July 1993, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing WITNESS NOTIFICATION to the following:

* The Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 225
Washington, D.C. 20554

Larry Miller, Esq.
Hearing Branch, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
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George Culver

* Hand Delivery